

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3404 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

SHRI B.H. PARMAR & ORS.

VERSUS

THE STATE OF GUNJARAT & ORS.

Appearance:

MR DM WAGHELA for the Petitioners

MR ND GOHIL for the Respondents

Coram: S.K. Keshote,J

Date of decision:16.12.96

C.A.V. JUDGMENT

Heard learned counsel for the parties. The relevant prayers made by the petitioners in this Special

Civil Application read as under:

...To issue a writ of mandamus, certiorari or any other appropriate writ, direction or order:

- (a) quashing and setting aside the letter of the State Government dated 14.2.69 at annexure 'I' and directing the respondent-State and authorities to extend to the petitioners the pay scales of qualified Vaidyas pursuant to Sarela and Desai Pay Commissions recommendations and to pay to them the difference in salary with retrospective effect from the due dates;
- (b) directing the respondent-authorities to extend to the petitioners the benefits of the above said pay commissions recommendations and to fix the salaries of the petitioners on the basis of the pay scales of qualified Vaidyas under the above said recommendations and to fix their future salaries on that basis and to pay to them arrears in difference of salary on that basis;
- (c) directing the respondent-authorities to treat the petitioners as qualified Vaidyas for the purpose of pay scales and for all other service purpose and further directing the respondent authorities to grant to the petitioners all other benefits;
- (d) directing the respondent-authorities to enter the Licentiate in Ayurvedic Medicine course of the Ayurvedic Medical School, Bhavnagar in Part-I of the Schedule annexed to the Medical Practitioners' Act, 1963;
- (e) directing the respondent-Board to enter the names of the petitioners in Part-I of the register kept under the Gujarat Medical Practitioners' Act.
- (f) directing the respondents to treat the petitioners as qualified Vaidyas for all purposes and to extend to them all consequential benefits with retrospective effect;...

The petitioners were appointed as Vaidyas in the Government service. The Sarela Pay Commission, recommendations of which were given effect by the Government from 1.4.65, two pay scales have been prescribed for Vaidyas, i.e. one for qualified and another for unqualified Vaidyas. The petitioners were

treated to be unqualified Vaidyas and accordingly a revised pay scale as prescribed for unqualified Vaidyas has been given to them. The Government has made it clear under its letter dated 14.2.69 that the petitioners are unqualified Vaidyas and as such they are not entitled for the revised pay scale as recommended by the Sarela Pay Commission for qualified Vaidyas with effect from 1.4.65.

2. This writ petition is filed after 14 years of the date of the said order. The delay caused in filing of this writ petition has not been explained by the petitioners. Be that as it may. The learned counsel for the respondents raised a preliminary objection that this petition deserves to be dismissed only on the ground of suppression of material facts by the petitioners. The learned counsel for the respondents has given out that all the petitioners filed a Civil suit in respect of same relief, i.e. to declare that they are qualified Vaidyas and consequently entitled for the pay scale fixed for the qualified Vaidyas. That Civil Suit has been decreed by the Civil Judge, S.D., Bhavnagar. Thereafter, the respondents filed Regular Appeal No.2 of 1978 against the said judgment and decree of the Court below. This appeal was decided by the Extra Assistant Judge, Bhavnagar who allowed the appeal and set aside the judgment and decree of the trial Court. The petitioners herein filed Second Appeal No.87 of 1982 before this court which is pending. The counsel for the respondents contended that this fact has been suppressed by the petitioners. They have suppressed this fact and were able to get order of issue of Rule in the matter.

3. I have given my thoughtful considerations to the submissions made by the learned counsel for the respondents. The learned counsel for the petitioners does not dispute the aforesaid facts. I have called the file of Second Appeal No.87 of 1982 and I found therefrom that all petitioners are the party in the the Second Appeal. I have gone through the contents of this Special Civil Application. I found therefrom that the petitioners have not disclosed this fact in this Special Civil Application. The learned counsel for the petitioners confronted with this situation has tried to give out explanation that this fact has not been concealed and reference has been made to para-10 of the Special Civil Application. Para-10 of this petition reads as under:

"10. The petitioners submit that the courses of study which they have undergone is qualitatively far superior to the other courses recognised by the State Government and included in the schedule

annexed to the Gujarat Practitioners Act, 1963. Further, even the experts of Ayurvedic and Allopathic Medicine have authentically opined that the course of study imparted at Ayurvedic Medical School, Bhavnagar is an integrated course in Ayurvedic and Allopathic medicine with its comprehensive course which will enable the persons graduating from the School to practice in Ayurvedic and Allopathic Medicine independently all over the Country. Shri Chandrakant P. Shukla, Ex-Director of Ayurved in Gujarat State has also deposed in his evidence before the Hon'ble Civil Court that the course conducted at Ayurvedic Medical School, Bhavnagar was an integrated course and that the persons who have undergone this course ought to be treated as qualified Vaidyas. The Hon'ble Judge of the Civil Court has also observed in his judgment that Shri Chandrakant P. Shukla had opined to this effect. The observations made by the Hon'ble Civil Court in this respect are as under:

"Shri Shukla Ex.67 has stated in his evidence that one School was started for training of Vaidyas in time of the then Bhavnagar State, and that when he was the Chairman of Ayurvedic Faculty in the year 1965, he saw the Syllabus of the said School of Bhavnagar and found that it was for integrated course of ayurved and Allopathy. Shri Shukla opined in his evidence that the persons who have been trained in Bhavnagar Ayurvedic Medical School should be considered as qualified Vaidyas."

Thus the experts on the subject have also recognised that the course of Licentiate in Ayurvedic Medical imparted at Ayurvedic Medical School, Bhavnagar was a Course which was in integrated and comprehensive course of high content. The course was treated as equivalent to the other Licentiate in other Medical courses imparted at other Schools and colleges, like Licentiate in Ayurvedic Medicine at Patan. The course was treated as of the said level or even a higher level as compared to the other courses imparted at other schools and colleges. The petitioners, therefore, submit that since the course was of the same or a higher level as compared to the other courses imparted at other

schools and colleges which were recognised by the Ex-Saurashtra state and thereafter by the State of Gujarat, the petitioners who have undergone the course at Ayurvedic Medical School, Bhavnagar ought to be treated as qualified Vaidyas."

It is difficult to accept the explanation given by the petitioners. The petitioners have not stated anywhere in the writ petition that they have filed a Civil Suit in the matter. Though this Special Civil Application has been filed after decision in the Civil Suit by the Appellate Court and after filing of the Second Appeal before this Court, both, but they have not disclosed this fact. It is difficult to accept that from the averments made in para-10 of Special Civil Application it can be presumed and assumed and even inferred that the petitioners have disclosed the aforesaid facts.

4. The law is well settled that the petitioners are not entitled as a matter of course, to a writ of Certiorari or Mandamus and that they must be perfectly frank and open to the Court. They are under obligation before this Court to make full and correct disclosure of all the material facts in a candid manner and if they do not do so and suppressed any material fact and thereby obtained a Rule-nisi or notice or stay order the Court will not grant any relief to them on merits. In the case of Asistic Engineering Co. vs. Achhru Ram, reported in AIR 1951 ALL. 746, the Full Bench of the Allahabad High Court, while dealing with the obtaining of an ad-interim exparte stay order by suppressing the facts, has held that a person obtaining an exparte order or a Rule nisi by means of a petition for exercise of the extra ordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant fact from the Court, must refrain from making misleading statements and from giving incorrect information to the Court. Court should insist that person invoking the extra ordinary jurisdiction of the High Court should not attempt in any manner to misuse a valuable right by obtaining exparte orders by suppression, misrepresentation or mis-statement of facts. It has further been said in this case that if the facts are stated in such a way as to mislead and deceive the Court, in order to protect itself and to prevent and abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the application. In the case of K.K. Anathan Pillai v. The State of Kerala, reported in AIR 1968 KERALA 234, it has been laid down that a petitioner resorting to suppressio veri and suggestio falsi obtains exparte stay order should not be given any relief in a writ petition

under Article 226 of the Constitution. It has been said in this case that the petitioner's conduct is a relevant factor in the matter of invoking an extra ordinary jurisdiction. It has further been held that whatever sympathy one might feel on the merits, where the petitioner is guilty of suppressio veri and suggestio falsi, he disentitled himself to invoke extraordinary jurisdiction of this Court. In the case of Nand Lal v. State of Jammu and Kashmir, reported in AIR 1960 J.K. 19 it has been held that where the petitioners under Article 226 of Constitution have not stated the relevant facts correctly and candidly either in their petition or in the affidavit in support of their petition, this is by itself sufficient to entail an outright dismissal of the writ petition without going into its merits. It has further been held in this case that even if the petitioners have a good case on merits the Court will be entitled to decline to go into the merits and dismiss their petition because the conduct of the petitioners has been such as to mislead the Court in exparte interim order. In this case the leading authority of Rex v. Kensington Income Tax Commissioner, reported in 1917(1) K.B. 486 has been referred and relevant extract from the observations of Cozens Hardy M.R. quoted as follows:

"On an exparte application uberrima fides is required, and unless that can be established if there is anything like deception practised on the Court, the Court ought not to go into the merits of the case, but simply say we will not listen to your application because of what you have done."

In that very case Lord Scrutton L.J. put the matter very clearly by saying as under:

"It has been for many years the rule of the Court and one which it is of the greatest importance to maintain, that when any applicant comes to the Court to obtain relief on an exparte statement he should make a full and fair disclosure of all the material facts not law.... The applicant must state fully and fairly the facts and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the court will set aside any which it has taken on the faith of the imperfect statement."

In this case although the Court had found that the Commissioner had no jurisdiction to make the assessment yet it said:

"We refuse the writ of Prohibition without going into the merits of the case on the ground of the conduct of the applicant in bringing the case before us."

This authority has also been followed by the Full Bench of Allahabad High Court in the case of Asiatic Engineering Company (supra). Lord Haterlay in R. v. Church Wardens of All Saints Wigan, reported in 1876(1) A.C. 611 has stated:

"Upon a prerogative writ there may arise many matters of discretion which may induce the judges to withheld the grant of it matters connected with delay or possibly with the conduct of the parties."

Reference may also have to the case of Reg v. Gerland, 1870(39) LJ BS6 in which it was held:

"Where a process is ex debite justice the Court would refuse to exercise its discretion in favour of the applicant where the application is found to be wanting in bonafide."

In the case of T.Subramania Chettiar v. District Supply Officer, reported in AIR 1995 MADRAS 54 the Court held:

"Any way, it is clear that the petitioners have suppressed in the supporting affidavit this particular fact, namely, that the payment of renewal fee and the application for registration certificate were out of time. In all fairness, the petitioners in their supporting affidavit should have mentioned about this material fact, but deliberately have suppressed the above said material fact, on this ground also, this writ petition is liable to be dismissed."

Again the Madras High Court, in the case of Kamashi v. A. Radhakrishnan and Others, reported in AIR 1995 MADRAS 60 observed as follows:

When the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is invoked, the person who does so must take the Court into confidence and place all the facts before it without any reservation. If the Court finds that the petitioner has not stated the full truth in the relevant matters, it shall refuse to exercise its discretion in favour of the petitioner."

The Apex Court in the case of Ramjas Foundation v. Union of India, reported in 1993 SUPP(2) SCC 20, in para No.7

observed:

"It is well settled that a person invoking an equitable extraordinary jurisdiction of the Court under Article 226 of the Constitution is required to come with clean hands and should not conceal material facts. The objection regarding not affording an opportunity of personal hearing in respect of objections filed under Section 5A of the Act was one of the main planks of the grounds raised in the writ petition as well as in the special leave petition filed before this Court and ought we know if such ground had not been taken this Court would have entertained this appeal or not."

5. A reference may have to the two other decisions of Apex Court in the case of Rama Narang v. Ramesh Narang & Ors., reported in JT 1995(1) SC 515, and in the case of Agricultural And Processed Food Products v. Oswal Agro Furane & Ors., reported in (1996)4 SCC 297. A reference may further have to other two decisions of this Court in the case of Ghelabhai Popatbhai Tarpara & Ors. v. Agricultural Produce Market Committee, Kelavad & Anr., reported in 1988(2) GLR 1425, and in the case of Narendra Bhimabhai Patel & Ors. v. State of Gujarat & Anr., reported in 1984(2) GLR 1403.

6. The fact of filing of the suit was very material and relevant to the controversy which has been raised by the petitioners in this Special Civil Application. Not only this that it was relevant, but for the same relief, the petitioners have approached to the Civil Court and have lost there and the matter is still sub-judice before this Court. Non disclosure of this fact is certainly very serious concealment or suppression of material fact. The petitioners, in view of this fact, have not come up before this Court with clean hands. By suppressing this material and important fact, the petitioners succeeded in getting the order of issue of Rule nisi and I find sufficient merits in the contention of the learned counsel for the respondents that only on this ground, the petition deserves to be dismissed. Suppression of fact of previous litigation on the same subject is very material and relevant and this conduct of the petitioners disentitles them from getting any consideration of the Special Civil Application by this Court on merits. Apart from this, the petitioners cannot be permitted to avail of two parallel remedies simultaneously. The petitioners have chosen to go to the form of civil suit and they should have stick to that form and in fact they still continue with those proceedings as against the decision

of the Appellate Court, allowing the appeal of the respondents herein, they preferred Second Appeal which is pending before this Court on the date on which this Special Civil Application has been filed.

7. Taking into consideration the totality of the facts of the case, I am satisfied that this writ petition deserves dismissal only on the ground of suppression of material fact by the petitioners. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. The petitioners are Vaidyas in Government service and they are sufficiently senior officers of the Government. They cannot be said to be innocent or illiterate or an ordinary village litigant. This fact of filing of the civil suit on the subject concerned has been deliberately concealed from Court. In view of this fact, exemplary costs are to be awarded to the respondents. Each petitioner is directed to pay Rs.1,000/- by way of costs of this Special Civil Application. This amount has to be paid by the petitioners to the Secretary, Panchayat Health & Family Welfare Department, Government of Gujarat. The respondent No.1 is directed to deposit 50 % of this amount received by it in the office of Gujarat State Legal Aid & Advisory Board, High Court Building, Navrangpura, Ahmedabad and the remaining 50% in any of the funds maintained by the Chief Minister for famine or other calamities. The respondent No.1 is further directed to file a copy of receipt of the aforesaid amount on the file of this case. The petitioners are directed to pay the amount of this costs within one month from the date of receipt of certified copy of this Court.

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(sunil)